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DATE: April 27, 1995
CASE NO. 94-DBA-0036

In the Matter of:

Disputes concerning the payment of prevailing wage rates and proposed debarment for labor standards violations by:

TEXAS WINDOWS AND WALLS, a corporation,
and LLOYD DOOLEY, JACK WATTS and JESSE CRUZ, Individually and as corporate officers,

With respect to laborers and mechanics employed by the Subcontractor on Contract No. J25c-001 for the Federal Bureau of Prisons.

APPEARANCES:

LLOYD DOOLEY
JESSE CRUZ
JACK WATTS
For the Respondents

SUSAN M. JORDAN, ESQUIRE
For the U.S. Department of Labor

BEFORE: PAUL H. TEITLER
Administrative Law Judge

DECISION AND ORDER APPROVING SETTLEMENT

This proceeding arises from a Determination by the Assistant Administrator, Wage and Hour Division of the United States Department of Labor's Employment Standards Administration that Texas Windows and Walls, a corporation, and Lloyd Dooley, Jack Watts and Jesse Cruz, individually and as corporate officers, have disregarded their obligations to employees within the meaning of the Davis-Bacon Act, as amended (40 U.S.C. 276a et seq.), and have committed aggravated or willful violations of the Contract Work Hours and Safety Standards Act (40 U.S.C. §327 et seq.) A detailed Consent Findings and Order of Dismissal signed by the Respondents Lloyd Dooley, Individually and as owner of Texas Windows & Walls, Jesse Cruz and Jack Watts, and Susan M. Jordan, Esquire, for the U.S. Department of Labor is hereby attached (designated as Joint Exhibit 1).

The Consent Findings and Order of Dismissal has been presented to the undersigned and the parties have requested that the settlement agreement be approved as follows:

CONSENT FINDINGS AND ORDER OF DISMISSAL

The United States Department of Labor and Respondent Lloyd Dooley d/b/a/ Texas Windows & Walls, (hereinafter referred to as "respondent") in full resolution of the above-captioned matter and pursuant to 29 C.F.R. §6.32, hereby stipulate and agree as follows:

I

Respondent, at all times relevant to this matter, was a subcontractor on the contract in issue in this proceeding. Respondent Lloyd Dooley, at all times relevant to this matter, was the owner of Texas Windows & Walls, and the party responsible for exercising control over the wages paid, the hours of work, and other conditions of employment maintained by the company doing business as Texas Windows & Walls.

II

The above-captioned construction contract was subject to the provisions of the Davis-Bacon Act 40 U.S.C. §276a, et seq., the Contract Work Hours and Safety Standards Act ("CWHSSA") 40 U.S.C. §327, et seq., and the Department of Labor regulations at 29 C.F.R. Part 5. The construction contract also contained the representations, prevailing wage requirements and stipulations required by the labor standards provisions of the Davis-Bacon Act, CWHSSA, and the applicable regulations issued thereunder at 29 C.F.R. Part 5.

III

Pursuant to the Davis-Bacon Act, the CWHSSA and the applicable regulations at 29 C.F.R. Part 5, respondent was required to pay certain of his employees the applicable prevailing wage rate for the classifications of work performed as set forth in the applicable Department of Labor wage decision, to pay certain of his employees one and one-half times the applicable basic hourly wage rate for the classification of work performed for all overtime hours worked and to submit weekly, complete and accurate certified copies of all payrolls for work performed under the contract in issue.

IV

The Department of Labor has charged that respondent failed to pay certain of his employees the applicable prevailing wage rate for the classification of work performed for all hours worked, and one and one-half times the applicable basic hourly wage for all overtime hours worked, under the contract in issue; and that respondent failed to submit weekly, correct and complete certified copies of all payrolls for work performed under the contrast in issue.

Specifically, the respondent paid apprentice rates to certain employees without having an approved apprenticeship program in accordance with 29 C.F.R. §5.5(a) (4) (i).

V

Respondent has entered an appearance and, without admitting culpability, desires to effect an amicable resolution of this matter. Respondent, therefore, now agrees for settlement purposes that backwages in the total amount \$21,602.63 are owed to the employees named, and in the amounts specified, on the attached Schedule A, in resolution of the dispute concerning the classification of employees.

VI

The Department of Labor will distribute the aforementioned backwages in accordance with the attached Schedule A. The parties agree that any funds not distributed within two years from the date of the order of Dismissal in this matter to the named employees or their personal representatives, because of an inability to locate proper persons or because of such persons' refusal to accept such funds, shall be deposited with the Treasurer of the United States.

VII

The parties agree that Jesse Cruz and Jack Watts shall be dismissed from these proceedings as Respondent Lloyd Dooley d/b/a Texas Windows & Walls has accepted sole liability for the alleged violations. Jesse Cruz and Jack Watts are to bear their own costs in this action.

VIII

The respondent certifies that his company "Texas Windows & Walls" has been out of business since 1992 and that he has no intention at this time to reopen the business.

IX

In accordance with the provisions contained herein, and pursuant to 29 C.F.R. §6.32(b), the parties further stipulate and agree this matter may be dismissed by Order of the Administrative Law Judge, each party is to bear its own fees and other expenses incurred in connection with any stage of this proceeding; the order shall have the same force and effect as an order made after full hearing; the entire record on which the order will be based shall consist solely of the complaint and this agreement; the parties waive any further procedural steps before the Administrative Law Judge and Wage Appeals Board regarding those matters which are the subject of this agreement; and the parties waive any right to challenge or contest the validity of these Findings and Order based thereon.

SCHEDULE A

EMPLOYEES

UNDERPAYMENTS

J. Bernanier	\$1,847.41
L. Blue, Jr.	786.52
R. Emory	2,929.14
T. Frederickson	1,724.30
M. Gross	553.00
Z. Hill	458.80
K. Keating	2,415.44
V. Meyer	2,215.65
D. Mickatavage	4,791.08
D. Pachiol	88.60
J. Purshnigg	811.00
S. Wagner	2,010.83

K. Wasser	<u>970.86</u>
Total	21,602.63

I have carefully considered the facts involved in this case and the difficult legal and factual questions in dispute, and, upon careful evaluation of same, I conclude that the settlement is fair and in the best interest of the parties. Moreover, I find that the Settlement was arrived at without duress, and only after full exploration by the parties of all issues in dispute.

Accordingly, it is hereby ORDERED that the Consent Findings and Order be, and hereby is APPROVED.

PAUL H. TEITLER
Administrative Law Judge

Dated:
PHT:abr